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April 29, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CS Docket 96-46

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206, I submit this original and one copy of a letter disclosing a written and oral ex parte presentation in the above-captioned proceeding.

On April 26, 1996, the undersigned, James N. Horwood, and Anthony Wright, on behalf of the Alliance for Community Media, the Alliance for Communications Democracy, the Center for Media Education, the Consumer Federation of America, People for the American Way, the Consumer Project on Technology, and the Office of Communication of the United Church of Christ, met with Meredith Jones, Rick Chessen, Rodney McDonald, John Logan and Gary Laden of the Cable Services Bureau. The meeting dealt with the imposition of various third-party access requirements on open video systems operators, including matters set forth in the attached talking points, which were handed out at the meeting.

Sincerely,

Jeffrey S. Hops
Director, Government Relations

Enclosures:

cc: Meredith Jones, Esq.
Rick Chessen, Esq.
Rodney McDonald, Esq.
John Logan, Esq.
Gary M. Laden
James N. Horwood, Esq.
Anthony Wright

TALKING POINTS FOR FCC MEETING

1. OVS is one of four ways a telephone company can get into the video business; Congress did not intend for it to be the only way. The Commission should not be cowed into believing that OVS must become the dominant means for local exchange carriers to offer video services.

2. RBOCS state that Congress wants OVS to be successful, but they don't say why. Congress wanted OVS to be successful because it is intended to offer meaningful opportunities for third party access. If it fails to meet this requirement, it can't be called successful, even if it is used by the entire industry.

3. OVS should succeed -- but it should succeed because it offers video customers a distinctly different type of product. The RBOCs are using the imperative that OVS succeed at any price as a transparent ploy to undercut Title VI regulation.

4. RBOCs can get into cable right now, and do so on a regulatory level playing field. US West has bought Continental, and other RBOCs own significant chunks of other MSOs. RBOCs cannot claim they will not enter the video services market unless they are induced by favorable OVS rules. They are already active participants in the video services market.

5. The RBOCs are trying to suggest that OVS systems will always be overbuilds competing with existing cable operators. But there is no reason for this to be the case. We believe that the paradigm is more like the US West buyout of Continental -- a local exchange carrier will take a cable system and request that the commission call it OVS. It is this paradigm that should govern the Commission's thinking. If less regulation were required as an incentive to overbuild, then privileges should be triggered by overbuilding. But the commission is prohibited by law from conditioning OVS certification on this. The Commission should not use a competitive paradigm where one will probably not arise.

6. OVS will consequently only provide regulatory relief for monopolistic providers in most instances.

7. Market forces will not lead to competition where they have not done so already. Regulatory reduction will only lead to entrenchment of monopolistic providers. Allowing cable companies to switch to OVS will not lead to fair competition, but will simply make MSOs more likely targets for RBOC buyouts.

8. The Cable Bureau's experience with regulating leased access on cable illustrates the difficulties the Commission faces in persuading video providers to permit nondiscriminatory third-party access.

9. The RBOCs are asking the Commission to give OVS operators editorial control through the back door by permitting any discrimination which comports with their marketing plan. The Commission cannot permit this to happen This defeats the purpose of OVS, which was to create a platform accessible to programmers not of the operator's choosing.

10. The Commission should not be disingenuous about the efficacy of dispute resolution as opposed to issuing sensible regulations. The dispute resolutionprocess always favors the party with the most financial resources. A small town in Minnesota is not in a financial position to take all its disputes with US West to the Commission. But the Commission can issue bright-line rules and revoke certification if the town in Nebraska files a complaint with the Commission -- a much less cumbersome administrative procedure.

11. RBOCs are asking for the authority to discriminate as to access. They should be required to provide examples of what they consider to be reasonable discrimination. In the absence of such statements, we can only assume that they mean "ad hoc" or "arbitrary." Certainly the standard "reasonably required to enable the system to compete effectively" is no standard at all -- particularly when there is no competition.

12. Non-discriminatory rates and non-discriminatory access require some form of rate regulation. In exempting OVS from Title II, that is all they did -- but use of Title-II like language clearly implies that some form of regulation is authorized, even if not precisely like Title II.

13. Public disclosure of contracts is a sine qua non for a determination of whether a contract is reasonable; there is no way to make such discrimination apparent without comparing it to the terms and conditions offered other providers, including the OVS platform operator's own affiliate. Permitting any entity to have access at terms disclosed by a previous contract is an excellent way to prevent discrimination without engaging in rate regulation activities. And requiring to offer the same rates to others as it offers to its own affiliate will provide further assurances that the rates charged are fair.

14. We are not asking the Commission to require OVS operators to negotiate with franchise authorities -- but we believe they will want to in order to build a cooperative arrangement for joint provision of PEG services in those areas where OVS is an overbuild.

15. It is both technically and economically feasible to provide franchise-specific PEG narrowcasting. Cable operators are able to offer it profitably -- there is no reason why OVS operators cannot do so too -- as long as they are aware of that requirement in advance.

16. Section 611, read in its entirety, clearly encompasses the authority to require capacity, services, facilities and equipment -- otherwise, Section 611(c) would be surplusage in the context of the OVS statute. The RBOCs interpretation that services, facilities and equipment are not required clearly contravene Congress' intent that such services be offered to extent neither greater nor lesser than their cable system counterparts.